

ITEM 6-B

CITY OF ALAMEDA

Memorandum

To: Honorable President and
Members of the Planning Board

From: Andrew Thomas
Planning Services Manager

Date: February 13, 2012

Re: Report on Planning Director action on Administrative Amendment of
January 9, 2012 Planning Board Condition of Approval 8.1 for Alameda
Landing Retail Center Development Plan and Street Plan Amendments
(PLN11-0328)

BACKGROUND

On January 9, 2012, the Planning Board held a public hearing and approved a Resolution with conditions of approval for the Development Plan and Street Plan Amendments for the Alameda Landing Retail Center. At the meeting, Catellus (the “applicant”) and its major tenant (Target Stores) agreed to a condition of approval limiting the amount of floor area that would be devoted to non-taxable goods in the Target Store for a period of five years.

On January 19th, the City received an appeal of the Planning Board’s action from Carmela Hernandez and United Food & Commercial Workers Local 5 (the “Appellants”). Since January 19th, the appellants and the applicant have been working on a revision to the Planning Board condition that would satisfy all the parties.

On Wednesday, February 01, 2012, staff received notice that the parties had come to an agreement on proposed revisions to the Planning Board’s condition.

Pursuant to Section 6.4.3 of the Alameda Landing Mixed Use Commercial Project Development Agreement (DA), the applicant requested that the Planning Director administratively amend the condition to reflect the revisions agreed to by the applicant and the appellant. Pursuant to the Alameda Landing DA, the Planning Director may under specified circumstances administratively amend a Planning Board condition at the request of the applicant (Catellus). If the Director takes such action, the action must be noticed as an informational item for a Planning Board meeting, but no Planning Board hearing or action is required unless such hearing and action is requested within the time set forth in the Alameda Landing DA.

On February 2, 20102, the Planning Director approved the administrative amendment of the condition at the applicant’s and appellants’ request. Notice of the action and

Planning Board meeting was given by posting the site, noticing the neighbors, and advertising in the newspaper.

If the City does not receive a written request for a Planning Board hearing within 10 days after the Planning Director's decision (February 12th) or at the Planning Board meeting, then the action of the Planning Director is final.

As described in the attached letters from the applicant and the appellant, if no hearing is requested at or before the Planning Board meeting, then the appeal is withdrawn. However, if there is a request for a hearing on the matter, the administrative amendment will be void and the appeal will not be withdrawn.

ANALYSIS:

The January 9, 2012, Planning Board resolution of approval includes the following condition:

8.1 Catellus agrees with respect to Building K, for a period of five years commencing on the issuance of the initial certificate of occupancy for Target, to limit the area of the sales floor that will be dedicated to the sale of nontaxable merchandise to less than 10% of the total sales floor area.

The Planning Director approved the following amended condition 8.1:

8.1. No single retail store or tenant in the Retail Center that exceeds 90,000 square feet in size shall include ten percent (10%) or more sales floor area devoted to non-taxable merchandise for a period of twenty (20) years from the issuance of the initial certificate of occupancy for the building in which the store or tenant is located. Thereafter, there shall be no limitation on the percentage of floor area devoted to non-taxable merchandise within the Retail Center. Notwithstanding the foregoing, in the event that the City's zoning ordinance is amended to eliminate or make less restrictive the prohibition of "super stores" (as defined in the zoning ordinance) in any zoning district, then this condition shall be automatically eliminated or made less restrictive to the same extent as the amendment to the zoning ordinance. Any amendment to this Condition 8.1, other than an automatic amendment pursuant to the immediately preceding sentence, shall require a noticed public hearing before the Planning Board, subject to appeal to the City Council pursuant to the applicable provisions of Section 3-25 of the Alameda Municipal Code, in accordance with the Development Agreement, including without limitation the applicable provisions of Section 30-4.20 of the Alameda Municipal Code.

Under the revised condition:

- The applicant agrees to lengthen the time of the limitation from 5 years to 20 years.

- If at a future date, the City Council decides to rescind the citywide “Superstore” ordinance, then the limitations imposed by condition 8.1 would automatically be rescinded.
- If at a future date, the City Council amends the citywide “Super Store” ordinance to make it less restrictive, then the limitations imposed by condition 8.1 would automatically become less restrictive to reflect the amended ordinance.
- The condition may be amended at the applicant’s request at a future date by the Planning Board, provided the Planning Board holds the required public hearing with public notice, subject to appeal to the City Council.

The Planning Director approved the requested revision for the following reasons:

- The revision is minor when considered in light of the Alameda Landing Commercial Project as a whole, and substantially conforms with the material terms of the Alameda Landing Commercial DA.
- The revised condition is acceptable to the applicants and the appellants.
- The revised condition is acceptable to the City because it reserves the purview and right for the Planning Board to modify the condition at the applicant’s request in the future if conditions change, and the revised condition acknowledges that the City Council reserves the right to amend citywide ordinances in the future if conditions change and if such a change should reduce the restrictions, then that change should apply to this project as well.

RECOMMENDATION

This report is provided for information purposes. No action is recommended or required.

Respectfully submitted,



Andrew Thomas
Planning Services Manager

Attachments:

1. Letter from Applicant (Catellus) Requesting Administrative Amendment to Condition
2. Letter from Appellant (Mr. Mark Wolf for United Food & Commercial Workers Local 5 and Caremela Hernandez) Requesting Administrative Amendment to Condition
3. Letter from Lori Taylor, Community Development Director approving Administrative Amendment to Condition